

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In the Application of:

Stewart D. Lyman et al.

Attorney Docket No.: 2813-L

Serial No.: 08/994,468

Filed: December 19, 1997

For: Medium Containing Flt3 Ligand For  
Culturing Hematopoietic Cells



Technology Center: 1633

Examiner: J. Kerr

Handwritten signature and date 12/13/99.

**RESPONSE TO OFFICE ACTION**

Assistant Commissioner for Patents  
Washington, D.C. 20231

Dear Sir:

In response to the Office Action mailed August 4, 1999, in connection with the referenced patent application, Applicants provide the following remarks.

**Remarks**

In view of the following remarks, Applicants respectfully request reconsideration of the claims pending in this application. Claims 1-8 are pending. Claims 1-8 stand rejected. In the discussion that follows Applicants address each of the objections and rejections in the order in which they appear in the Office Action mailed August 4, 1999.

With respect to the Examiner's comments relating to claim number, Applicants do not agree with the Examiner. However, if the Examiner feels that it is necessary to renumber the claims as claims 1-8, Applicants will treat the claims as claims 1-8.

The Examiner rejects claims 1, 2 and 5 under 35 U.S.C. §102(b) as being anticipated by Lyman et al. Claims 1 and 2 are directed to hematopoietic cell expansion media containing Flt3-L and methods for expanding hematopoietic cells using the expansion media. Claim 5 is directed to an expansion media that includes Flt3-L and steel factor.

Applicants traverse this rejection and submit that the Examiner has cited the Lyman et al. reference improperly. As demonstrated below, the present application has an effective filing date, that is at least as early as August 25, 1993, and the Lyman et al. reference has a publication date no earlier than December 17, 1993. More particularly, this application is a continuation of S/N 08/444,627, which is a divisional of S/N 08/243,545, which is a CIP of S/N 08/209,502, which is a CIP of S/N 08/162,407 filed December 3, 1993, which is a CIP of S/N 08/111,758 filed August 25, 1993. S/N 08/111,758 and S/N 08/08/162,407 disclose hematopoietic cell and progenitor cell expansion methods and expansion media for expanding hematopoietic cells and progenitor cells containing Flt3-L. The disclosure of Example 7 and

Example 8 of the present application is present in S/N 08/111,758 and the disclosure of Examples 7-9 is present in S/N 08/162,407. These applications were filed on August 24, 1993 and December 3, 1993, respectively. The Lyman et al. reference, on its face, has a publication date of December 17, 1993, which is well after the August 25, 1993 effective filing date of the claimed subject matter. Accordingly, the Lyman et al. reference is not properly cited and this rejection should be withdrawn.


In another prior art rejection the Examiner rejects claims 1-8 under 35 U.S.C. §103(a) over the Lyman et al. reference, in view of Heimfeld et al. and Hoffman et al. Since, as demonstrated above, the primary reference, Lyman et al., is not properly cited, this rejection is overcome and should be withdrawn.

Next the Examiner rejects claims 1-8 provisionally under the doctrine of obviousness-type-double patenting as being unpatentable over claims 1-7, 9 and 10 of copending Application No. 08/399,404. The Examiner asserts that the "conflicting claims are not patentably distinct from each other because the claims of Application No. 08/399,404 are directed to a kit which comprises a cellular growth medium and a growth factor. Applicants traverse this rejection. In particular, Applicants submit that the "conflicting" claims, in fact are different inventions, one being a cell expansion medium and the other being a kit that may contain the medium. Moreover, since Application No. 08/399,404 is the later filed application, the test is a one-way determination of whether the claims of Application No. 08/399,404 are obvious over the claims of the present application. Thus, since Applicants are of the opinion that the claims of the instant application are allowable, a patent should issue from the instant application and the determination of obviousness-type-double patenting taken up with the 08/399,404 application. Accordingly, this rejection should be withdrawn.

Finally, the Examiner is of the opinion that the sequence listing of the present application does not comply with the requirements of 37 C.F.R. 1.821-1.825 for the reasons set forth on the Notice to Comply With Requirement For Patent Applications Containing Nucleotide Sequence And/Or Amino Acid Sequence Disclosure (copy enclosed) Applicants submit that the PTO is in error. With the filing papers that accompanied the present application, Applicants provided a statement pursuant to 37 C.F.R. §1.821(e). The statement makes reference to the former application containing the sequence listing, asserts that the sequence listings are identical, and requests that the compliant computer readable form be used in this application. A copy of the statement accompanies this paper. In view of this statement, Applicants believe that the application does comply with the sequence listing rules and request that the requirement to submit a new listing, statements, and computer readable form be withdrawn.

In view of the foregoing remarks, Applicants submit that the claims of the present application are in condition for allowance and respectively request a notice to that effect.

Respectfully submitted,

  
Janis C. Henry  
Attorney for Applicant  
Reg. No. 34,347

Immunex Corporation  
Law Department  
51 University Street  
Seattle, WA 98101  
Telephone: (206) 470-4189

CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Assistant Commissioner for Patents, Washington, D.C. 20231, on the date indicated below.

Date: December 3, 1999

Signed: Janice M. Kertson